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## Hedge Funds Unsure In Media Spotlight

By Jay Cooper

Hedge funds have generated an increasing amount of ink in the press over the last few years, plenty of it negative. Hedge fund managers have widely differing views on how far they can respond and are hindered by fears that they violate laws in talking to the media. Experts say managers may become more open after they are forced to register with the Securities and Exchange Commission in 2006, but the issue of dealing with the media is likely to remain cloudy.

Many hedge funds are unsure how far they can use the media to get their names out. "It's a hot and sticky time out there in hedge fund marketing," says Thomas Walek, the president of a public relations firm who spoke on the issue at a hedge fund conference in New York last week. According to data from Walek's firm, Walek & Associates, hedge funds are appearing in the press more each year. The firm's data shows that the term hedge fund showed up in media outlets less than 10,000 times in 2000. In 2004, the term popped up in the media about 28,000 times, and is on pace to appear slightly more than 40,000 times this year.

While hedge fund coverage increases, opinions over what these managers can say to the press are all over the board. Current regulations do not require a hedge fund to register with the SEC as long as they do not promote themselves in the general public, among other criteria. The SEC does not outline what is considered self-promotion, however. Many hedge fund lawyers interpret that to mean that silence is the best policy.

In 2006, a new law will force most hedge fund advisers to register with the SEC. While that forces those advisers to register, the actual hedge fund will remain unregistered. The managers of those funds are likely to continue being guarded with the press so it does not appear they are promoting their own funds, explains Ricardo Davidovich, an attorney for the firm Tannenbaum Helpner Syracuse & Hirschtritt.

While they won't talk about individual hedge funds, registration means some of those advisers will say more about their firms, Davidovich explains. He says managers that only manage hedge funds are still not likely to disclose much about their firm, for fear of the appearance of promoting a fund. But registered investment advisers (RIAs) who manage both hedge funds and separately managed accounts will find themselves within the legal parameters to say more about their firm, Davidovich says. "The reason being that you're not in a position where you're advertising your fund," he explains. "You're managing a service you provide."

He says RIAs who are in both the separate account and hedge fund world will be able to discuss things such as strategy and their outlook on the market, particular market sectors or that adviser's investment background.

Davidovich recommends that advisers who only offer hedge funds should stay guarded. Davidovich says he does not know of any instances where the SEC has actually sanctioned a firm for talking to the press. However, he says "if the commission was very serious about it, it wouldn't be difficult for them to find a lot of violations," he says.

But opinions differ over how much hedge fund managers can disclose to the press. Some consultants for hedge funds say it is fine to get the name of the firm out there, as long as the actual fund, its performance or the stocks it holds are not discussed. Ted Eichenlaub, a partner for Adviser

Compliance Associates, a consultancy for investment managers, says managers can discuss their investment outlook or philosophy, predictions on interest rates and even give reaction to industry events, as long as they do not discuss how those events affect that manager's portfolio.

Eichenlaub says hedge fund managers launching their funds can also say what type of strategies they will run. "It's not a problem to say I run a macro strategy or a long-short strategy," he says, but the manager can not get more specific about the funds.

"Unfortunately, a lot of this is a really gray area," Eichenlaub admits. But he says the registration of hedge fund advisers may clear up some of the press-related issues. When hedge fund advisers are forced to register, those firms will have to share their policies and procedures about marketing and advertising to the SEC. That could likely include rules specifically stating how that firm will deal with the press, he explains.

But Walek says his PR firm works closely with attorneys on a case-by-case basis for hedge fund managers dealing with the press. He says the amount a manager can say sometimes depends on the audience. A manager could say more to an off-shore publication or a trade publication that is read by the hedge fund industry and not the general public, he explains.

Hedge fund managers should also consider what to do when a reporter is doing a story on a hedge fund with or without that firm's comment. In those cases, a firm may want to consider talking to the publication to make sure information is accurate, or consider talking to the reporter on background only, Walek says.